

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Uwe Sonnewald et al.

Application No.: 10/516075

Confirmation No.: 8256

Filed: November 29, 2004

Art Unit: N/A

For: **METHODS FOR OBTAINING PATHOGEN
RESISTANCE IN PLANTS**

Examiner: Not Yet Assigned

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**STATEMENT TO SUPPORT FILING AND SUBMISSION
IN ACCORDANCE WITH 37 CFR §§1.821 THROUGH 1.825**

- 37 C.F.R. §1.821(f)** - I hereby state that the information recorded in computer readable form is identical to the written (on paper or compact disc) Sequence Listing submitted herewith.
- 37 C.F.R. §1.52(e)(4)** - I hereby state that the two compact discs are identical.
- 37 C.F.R. 1.821(g)** - I hereby state that the submission, filed in accordance with **37 C.F.R. 1.821(g)**, herein does not include new matter.
- 37 C.F.R. §1.821(h)** - I hereby state that the submission, filed in accordance with **37 C.F.R. §1.821(h)**, herein does not include new matter or go beyond the disclosure in the international application.
- 37 C.F.R. §1.825(a)** - I hereby state that the amendments, made in accordance with **37 C.F.R. §1.825(a)**, included in the substitute sheet(s) or compact disc(s) of the Sequence Listing are supported in the application, as filed, at _____. I hereby state that the substitute sheet(s) of the Sequence Listing does (do) not include new matter.
- 37 C.F.R. §1.825(b)** - I hereby state that the substitute copy of the computer readable form, submitted in accordance with **37 C.F.R. §1.825(b)**, is the same as the amended Sequence Listing.

37 C.F.R. §1.825(d) - I hereby state that the substitute copy of the computer readable form, submitted in accordance with **37 C.F.R. §1.825(d)**, is identical to that originally filed.

Respectfully submitted,

By Roberte Makowski

Roberte M. D. Makowski, Ph.D.

Registration No.: 55,421

CONNOLLY BOVE LODGE & HUTZ LLP

1007 North Orange Street

P.O. Box 2207

Wilmington, Delaware 19899

(302) 658-9141

(302) 658-5614 (Fax)

Attorney for Applicants

447547

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Uwe Sonnewald et al.

Application No.: 10/516075

Confirmation No.: 8256

Filed: November 29, 2004

Art Unit: N/A

For: METHODS FOR OBTAINING PATHOGEN
RESISTANCE IN PLANTS

Examiner: Not Yet Assigned



**REQUEST FOR WITHDRAWAL OF HOLDING OF ABANDONMENT OR IN
THE ALTERNATIVE, PETITION TO REVIVE**

MS PCT Legal Affairs
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The Applicants respectfully request that the pending status of the above-identified application (hereinafter "the application") be reinstated, or in the alternative that the application be revived, and forwarded to the Examiner for Examination. On February 14, 2006, Mr. Gary L. Welch at the PCT Help Desk was contacted by telephone to inquire about the status of the application following up from the submission of a Status Inquiry mailed on January 26, 2006 (Exhibit A). Mr. Welch ordered the file and responded via telephone on February 16, 2006, informing Applicants for the first time that the application went abandoned for failure to timely file a proper reply to a Notification to Comply With Requirements For Patent Applications Containing Nucleotide And/or Amino Acid Sequence Disclosures (hereinafter "the Notification") mailed on May 6, 2005 to Morrison & Foerster LLP (Exhibit B). Mr. Welch was kind enough to send to the Applicants a copy of the Notification via facsimile on February 16, 2005 (Exhibit B), which was the first time that Applicants had seen the Notification. The period for response to the Notification ended on December 6, 2005. However, the Applicants never received the Notification. Morrison & Foerster filed a Request for Withdrawal as Attorney 04/26/2006 CSHOOT 00000001 032775 10516075 01 FC:1453 1500.00 DA Agent on February 25, 2005 (Exhibit C), stating that the application was being transferred to another attorney, listing James Remenick at Powell Goldstein LLP as the new attorney of record. Over two months after the Request for Withdrawal, the Notification was sent to Morrison & Foerster instead of James Remenick (i.e. to the wrong address). *RECEIVED*

Furthermore, Applicants filed with the U. S. Patent and Trademark Office a new Power of Attorney for the application on May 16, 2005 (Exhibit D). The new Power of Attorney was received by the Patent Office on May 19, 2005 as evidenced by the stamped return postcard (Exhibit E). Applicants are still unable to access the file wrapper of the application either through private or public PAIR, even after the submission of the Power of Attorney in May 2005 (Exhibit D). The Patent Office misdirected the Notification (Exhibit B) to the previous law firm in charge of the application, Morrison & Foerster, who filed their Request for Withdrawal (Exhibit C) more than two months prior to the mailing of the Notification.

In summary, the misdirection of the Notification (Exhibit B) in this application, by the Patent Office, has caused the application to now become abandoned. Again, the Applicants respectfully request that the pending status of the application be reinstated, or in the alternative, the application be revived because the total delay of the application up until the abandonment was unintentional. Again, it is clear from the record, especially in view of the filings of the Request for Withdrawal as Attorney or Agent (Exhibit C), the new Power of Attorney (Exhibits D and E), the Status Inquiry (Exhibit A), and the follow up telephone inquiries, that the Applicants did not intend for this application to be abandoned.

Furthermore, Applicants are submitting a proper reply to the Notification with this Request.

Because of the Patent Office error in mailing the Notification to the wrong address, no fee is believed due. If there is any fee required with this paper, including the fee necessary for a petition to revive because the application was unintentionally permitted to become abandoned, the applicants respectfully request the Commissioner to charge our Deposit Account No. 03-2775, under Order No. 13173-00012-US from which the undersigned is authorized to draw.

A prompt and favorable action is earnestly solicited.

Respectfully submitted,

By Roberte Makowski
Roberte M. D. Makowski

Registration No.: 55,421
CONNOLLY BOVE LODGE & HUTZ LLP
Correspondence Customer Number: 23416
1007 North Orange Street, P.O. Box 2207
Wilmington, Delaware 19899
(302) 888-6410 (Tel), (302) 658-5614 (Fax)
Attorney for Applicants